IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2532 OF 2005.

Shivram G.Shetty. ... Appellant.

Versus.

Municipal Corporation of
Greater Bombay. ... Respondent.

Shri Nita Mandhyan i/by M/s.S.M.Associates for the Appellant.

Shri J.J.Xavier for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 14th MARCH, 2006.

P.C.:

1. Admit. The learned Advocate for the Respondent waives service. Taken up for hearing forthwith with the consent of the parties.

2. By order dated 21st April 2005, the learned Additional Chief Judge of the Small Causes Court, Bombay, has dismissed the Appeal preferred by the Appellant under section 217 of the Bombay Municipal Corporation Act, 1888. The order impugned shows that the Appeal has been dismissed in default. The learned Advocate appearing for the Respondent states that the Respondent has no objection if the order of dismissing the Appeal for default is set aside and the Appeal preferred by the Appellant is restored to file.

3. In view of this position, the following order is passed:

i) The impugned order dated 21st April 2005 is quashed and set aside. Municipal Appeal St.No.949 of 2004 is restored to file of the Court of Small Causes, Mumbai.

ii) The Court of Small Causes, Mumbai, will proceed to decide the Appeal in accordance with the law.

iii) All questions on merits of the pending Appeal are expressly kept open.

iv) The Appeal is allowed in the above terms with no order as to costs.

Judge.